

LIM BENG TECK v. REG.

[A. Cr. J. (Whyatt C.J.) December 7, 1956]

[Singapore — Magistrate's Appeal No. 131 of 1956]

Municipal Ordinance (1936 Ed. Cap. 133), ss. 144(7), (12) and 255 — Commencing building operations without approval of the City Council — Whether owner of building liable — Mandatory order.

In this case the appellant had been convicted of the offence of commencing building operations without previously giving notice to the City Council and obtaining their approval to the plans and specifications of the building as required by section 144 of the Municipal Ordinance. The appellant was fined \$500 and, in addition, a mandatory order was made against him requiring him to demolish the house. On appeal it was contended (i) that the proceedings should have been brought against the owner of the land and not against the appellant, who was the owner of the building, and (ii) that the mandatory order was not validly made.

Held: (1) section 144 of the Municipal Ordinance provides that the building operations were to have been commenced by the owner of the land on which the building stood and therefore the prosecution in this case should have been brought against the owner of the land;

(2) as the procedure set out in section 255 of the Municipal Ordinance was not followed in this case, the mandatory order was not properly made against the appellant.

Case referred to:—

(1) *R. v. Alsagoff* (1950) M.L.J. 249.

MAGISTRATE'S APPEAL.

T. W. Ong for the appellant.

T. A. Mahony (Crown Counsel) for the respondent.

Whyatt C.J.: — This is an appeal against a conviction for the offence of commencing building operations without previously giving notice to the City Councillors and obtaining their approval to the plans and specifications of the building as required by section 144 of the Municipal Ordinance. The appellant was fined \$500 and in addition, a mandatory order was made against him requiring him to demolish the building.

Two questions of importance are raised in this appeal; first, whether the proceedings were brought against the right person, and secondly, whether the mandatory order was validly made. It was contended on behalf of the appellant that proceedings should have been brought against the owner of the land and not against himself as owner of the building and in support of this contention, he relied upon the provisions of sub-section 12 of section 144 which read as follows:—

"Where any building operations are commenced or carried out in respect of any building, they shall be deemed to have been commenced or carried out by the owner of the land whereon such building is erected and he shall be liable therefor."

Counsel for the prosecution conceded that under the provisions of this sub-section a prosecution might have been brought against the owner of the land in the present case but maintained that a prosecution could also be brought against the owner of the building since the particular sub-section which creates the offence, namely sub-section 7, merely states that "no person" shall build without permission and such words are wide enough to include the appellant. It is true that the provisions of sub-section 7 could be construed to cover any person who commenced building operations, irrespective of whether such person was owner of the land or the building and if this sub-section stood alone, every prosecution would involve a factual inquiry as to who was the person who had commenced the building operations which were the subject of the complaint. Such an inquiry might present considerable practical difficulties, particularly if the buildings were of a temporary character, and it was doubtless with the object of avoiding or minimising such difficulties that the legislature introduced the legal fiction in sub-section 12, that building operations were to be deemed to have been commenced by the owner of the land on which the building stands.

It would be surprising if the legislature, having taken the unusual course of establishing a legal fiction for the purpose of facilitating a prosecution, should have intended that a prosecution could also be brought on a factual basis. If that had been the intention of the legislature, I think sub-section 12 would have contained some qualifying words, limiting the operation of the legal fiction to those cases where no prosecution was or could be brought on a factual basis. But there are no such qualifying words and if the construction contended for by the respondent is correct, it would follow that two prosecutions could be brought under section 144 and two punishments could be imposed on two different persons, notwithstanding that only one offence had been committed by one person. It is possible, of course, for the legislature to legislate for such an anomalous result if it so wishes, but I should require clearer words than appear in this section before I could be persuaded that this was its intention. In my judgment, the purpose of sub-section 12 of section 144 is to provide, by means of a legal fiction, a simple and speedy method of preventing unauthorised building and it was intended that this method should be in substitution for the normal method of establishing liability for a breach of a statutory provision of this character. It follows, therefore, that the prosecution in this case should have been brought against the owner of the land and accordingly the appellant was wrongly held liable in the present proceedings.

The second point can be dealt with very briefly. In the case of *R. v. Alsagoff*⁽¹⁾ the learned Chief Justice held that a mandatory order cannot be made in any case unless the procedure set out in section 255 is followed, that is to say, unless the Councillors make a complaint and the Magistrate's Court, hearing the complaint, makes a mandatory order on the owner or occupier. It was conceded by counsel for the respondent that this procedure was not followed in the present case and therefore the mandatory order was not properly made against the appellant.

For these reasons this appeal must be allowed.

Appeal allowed.

Solicitors: *Laycock & Ong.*

WONG YONG THENG & ANOR. v. REG.

[A. Cr. J. (Whitton J.) November 16, 1956]

[Singapore — Magistrate's Appeal No. 100 of 1956]

Criminal Trial — Order for disposal of property where accused is acquitted — Pawnbrokers Ordinance (Cap. 195), s. 27 — Criminal Procedure Code (Cap. 132), s. 430.

In this case the accused at the trial was charged with criminal breach of trust of certain jewellery. It appeared that the accused had obtained jewellery which belonged to one Hazara Singh, from the wife of that man, and had pawned them. (At the conclusion of the trial the learned Magistrate acquitted the accused and then ordered (i) that the jewellery be returned to the owner, i.e., Hazara Singh, and (ii) that the accused should repay the pawnbrokers the sums he obtained from them on the jewellery.) The learned Magistrate held that the wife had by transferring the jewellery secretly without the knowledge of her husband invested the jewellery with the character of stolen property and consequently the pawnings were unlawful within the meaning of section 27 of the Pawnbrokers Ordinance, thus conferring upon the Court the discretion to make an order for the disposal of the property. He was also of the opinion that if section 27 of the Pawnbrokers Ordinance did not apply, he had power to make the order under section 430 of the Criminal Procedure Code. The pawnbrokers appealed against the order.

Held: (1) the finding that the jewellery was stolen property could not be justified and therefore section 27 of the Pawnbrokers Ordinance could not be applied in this case;

(2) the Court had power to make an order for disposal of the property under section 430 of the Criminal Procedure Code;

(3) in the circumstances of the case the order that should be made is that the jewellery be returned to the owner on payment by him to the pawnbrokers of half the sums for which the jewellery was pledged.

Cases referred to:—

- (1) *R. v. Yap To* 11 S.S.L.R. 73.
- (2) *R. v. Nadaison* (1935) M.L.J. 148.
- (3) *Sem Hin Pawnshop v. R.* (1952) M.L.J. 165.
- (4) *Russul Bibee v. Ahmad Mosajee* I.L.R. 34 Cal. 347.

(5) *Ho York Quin of Chop Teck Chong Pawnshop v. R.* (1953) M.L.J. 1.

(6) *Leicester v. Cherryman* (1907) 2 K.B. 101.

MAGISTRATE'S APPEAL.

M. Karthigesu for the appellants.

J. F. McWilliam (Crown Counsel) for the respondent.

Whitton J. : — This is an appeal by the managers of two pawnshops against an order of the Eighth Magistrate concerning certain jewellery which had been the subject of a trial before him.

The facts relevant to the present issue are as follows. A woman named Malkit Kaur handed over to the Accused various pieces of jewellery which the learned Magistrate held to be the property of her husband. Malkit Kaur stated the reason she had done so was that the Accused had on different occasions asked her to let him have the articles for a few days to copy the designs. The Accused's story was that he had asked the woman for loans at different times and that she had handed over the jewellery to him, telling him to pledge it. At all events the Accused pawned the jewellery at the shops of the two appellants. Later it was recovered by the Police from these shops. The Accused was charged in due course with criminal breach of trust. The Magistrate at the conclusion of the trial acquitted him, and made the following order:—

- (i) That the jewellery be returned to the owner (Hazara Singh).
- (ii) That the Accused (S.N.M. Shaik Allaudin) repay the pawnbrokers the sums he has obtained from them on those articles.

It appears from his judgment that the learned Magistrate held the circumstance that Malkit Kaur had transferred this property secretly without the knowledge of her husband invested it with the character of stolen property and that, consequently, the pawnings had been unlawful within the meaning of section 27(1)(c) of the Pawnbrokers Ordinance (Cap. 195), thus conferring upon the Court the discretion to make an order of this nature. He was also of the opinion that if section 27 did not apply he had the power to make the order under section 430 Criminal Procedure Code.

The first ground of appeal was that the Magistrate was wrong in approximating the jewellery in law to stolen property. In this connection it is to be borne in mind the ground on which the Magistrate held the pawnings unlawful was that the jewellery had been stolen from the husband, not that it had been the subject of breach of trust by the pawner. That being so I do not think I need trouble myself about the conflicting authorities cited as to whether a loan of jewellery constitutes a trust within the meaning of